



PAH-104

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Kjell Lindskog

Examiner: Vernal U. Brown

Title: Method For Transporting An
Alarmed Container

Group Art Unit: 2612

Serial No. 10/502, 020

Filed: April 20, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop: Appeal Brief - Patents

APPEAL BRIEF

I. INTRODUCTION

This is an appeal from the rejection of Claims 1-20, made in the Official Action dated October 28, 2008, reopening prosecution on the merits in view of the Appeal Brief filed on August 13, 2008.

A timely Notice of Appeal was filed in the Patent and Trademark Office on January 30, 2009.

Appealed Claims 1-20 are reproduced in the attached Appendix of Appealed Claims.

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II. REAL PARTY IN INTEREST

SQS Security Qube System AB, a Swedish corporation maintaining its principal place of business at SE-931 27 Skelleftea, Sweden, the Assignee of all right, title and interest in and to the subject patent application, is the real party in interest.

III. RELATED APPEALS AND INTERFERENCES

Applicant, Applicant's Assignee, and the legal representative of Applicant and Applicant's Assignee, are unaware of any prior of pending appeals, interferences or judicial proceedings which may be related to, directly affect to be directly affected by, or have a bearing on the Board's Decision in the present Appeal.

IV. STATUS OF CLAIMS

Claims 1-20 have been rejected in the Official Action dated October 28, 2008, reopening prosecution on the merits in view of the Appeal Brief filed on August 13, 2008, and the rejection of Claims 1-20 has been appealed.

No claims have been allowed, withdrawn, objected to, or cancelled.

V. STATUS OF AMENDMENTS

No response to the Official Action dated October 28, 2008 was filed. Applicant elected to initiate a new Appeal.

VI. SUMMARY OF CLAIMED SUBJECT MATTER

Appealed independent Claim 1 is directed to a method for transporting an alarmed container designated by reference numeral 1, having a first electronic unit designated by reference numeral 2 which enables de-activation of an alarm to open the container without destroying the contents therein. (Applicant's Specification, page 2, line 22 through page 3, line 14; Fig. 1 of the drawing). A primary key designated by reference numeral 10 for opening the container 1 includes a second electronic unit designated by reference numeral 12 for communicating with the first electronic unit 2 for initiating opening of the container (Applicant's Specification, page 3, lines 21-22; page 4, lines 2-5; Fig. 1 of the drawing). The primary key 10 can be transported with the container (Applicant's Specification, page 5, lines 32-37). The container includes a destructive agent for destroying the contents therein unless the alarm is de-activated to permit authorized opening of the container (Applicant's Specification, page 2, line 30, through page 3, line 13).

The primary key 10 includes a portion of a code subset necessary for authorized opening of the container, and a secondary key designated by reference numeral 20 includes a second code subset necessary for authorized opening of the container (Applicant's Specification, page 4, lines 15-17; page 5, lines 1-20; Fig. 1 of the drawing). The primary key 10 is used simultaneously with the secondary key 20, which is located at the intended destination at which the container is to be opened, to complete the full

code necessary to permit authorized opening of the container without destroying the contents therein.
(Applicant's Specification, page 5, lines 20-37).

VII. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on Appeal are:

1. Whether Claims 1-5 and 8-20 are unpatentable under 35 U.S.C. Section 103(a) over the Kniffen et al patent (U.S. Pat. No. 5, 705, 991) in view of the Mellen et al patent (U.S. Pat. No. 6, 384, 709), in further view of the Levy patent (U.S. Pat. No. 4, 884, 507); and
2. Whether Claims 6-7 are unpatentable under 35 U.S.C. Section 103(a) over Kniffen et al in view of Mellen et al and Levy, in further view of Giessler et al (U.S. Pat. No. 6, 538, 557).

VIII. ARGUMENT

a) The Rejection Of Appealed Independent Method Claim 1 Under 35 U.S.C. Section 103(a)

Appealed method Claim 1 is the only independent claim presented for review in the present Appeal. This claim has been rejected under 35 U.S.C. Section 103(a) as being unpatenatable over Kniffen et al (U.S. Pat. No. 5, 705, 991) in view of Mellen et al (U.S. Pat. No. 6, 384, 709), in further view of Levy (U.S. Pat. No. 4, 884, 507). For purposes of simplifying the issues, the prior art rejection of the appealed

claims will be argued only with regard to independent method Claim 1. If this claim is allowed, the remaining appealed dependent Claims 2-20 will be allowable, at least for the same reasons as parent independent Claim 1.

As discussed above, appealed independent Claim 1 is directed to a method of transporting an alarmed container, the container including means for destroying the contents therein, said means for destroying being de-activated by providing a complete code set during authorized opening of the container. A first portion of the complete code set is provided by a first key which is movable with the container and carried by a person transporting the container. The second portion of the complete code set, which is necessary to complete the code set, is located at an intended destination where the container is to be opened. The first portion of the code set provided by the first key, and the second portion of the code set provided by the second key, are simultaneously imputed into the container to de-activate the means for destroying the contents within the container to permit authorized opening of the container only at the location where the second key is located.

The Kniffen et al patent discloses a system by which the delivery of the contents within a truck is monitored. The security entry system disclosed by Kniffen et al is intended to verify different stops of the truck which are both authorized, and in a proper sequence. This is accomplished by a system in which a security code is entered each time the truck reaches a delivery destination to verify 1). that the truck is at an authorized delivery destination, and 2). that the delivery destination is in a proper predetermined sequence.

When the truck arrives at a delivery destination, a security code is transmitted by radio waves from the destination to a clearinghouse, and an authorization signal from the clearinghouse is generated if

the truck is at an authorized delivery destination in a proper predetermined sequence. Therefore, Kniffen et al employs only an intended destination key, but does not require that a delivery person carry a separate key which coacts with the destination key for providing a complete code set for authorized access to the contents of the truck (container).

The Official Action dated October 28, 2008 concedes this issue in that it acknowledges "...Kniffen is silent on teaching a primary key is carried by a person transporting the container..." (page 3, lines 13-14 of the Official Action dated October 28, 2008).

Kniffen et al also does not teach or suggest that first and second keys must be used simultaneously to properly de-activate the alarm system, as expressly recited in independent method Claim 1 and disclosed in Applicant's specification. On the contrary, Kniffen et al discloses a system requiring several different consecutive sets of steps to de-activate an alarm. These steps include generating a signal from the delivery location, and transmitting it to a clearinghouse for verification, and thereafter generating a verification signal at the clearinghouse to gain access to the contents of the truck.

At page 3 of the Official Action dated October 28, 2008, the Examiner contends that Kniffen et al discloses detection of the presence of two or more users in a 60 second time period, constituting simultaneous co-action between the first and second user key device, relying upon column 9, lines 26-37 of the Kniffen et al Specification. Applicant respectfully disagrees with the Examiner's conclusion. The portion of the disclosure relied upon in the Official Action specifically states:

"In high security applications of the foregoing embodiments, the access control device can be configured to require the presence of two (or more) authorized users before permitting access to the

secured area. If two authorized users are not detected within a given period (such as 60 seconds), the lock will refuse to unlock..." (column 9, lines 26-31 of the Kniffen et al Specification).

Therefore, Kniffen et al merely requires that two different authorized users be in the same location within a predetermined time period, such as 60 seconds. Thus, there is clearly no simultaneous co-action between the two users as a result of the time lapse between the necessary presence the two authorized personnel in the same area. Kniffen et al itself defines "simultaneity" for other different operations disclosed in the Specification in the magnitude of about 5 seconds. (see, for example, column 9, lines 38-40 of the Kniffen et al Specification). Thus, by its own terms, Kniffen et al teaches against "simultaneous" presence of two or more authorized users in the same location.

In summary, Kniffen et al teaches against simultaneous use of both first and second keys to properly de-activate an alarm system to permit authorized access to the contents of a container, as expressly recited in appealed independent method Claim 1.

The Official Action dated October 28, 2008, at page 3, also concludes that "...The detection of two or more users is therefore considered as the presentation of the code subset and providing a complete code set base on the simultaneous co-action between the first and second user key device...". As discussed above, Kniffen et al fails to teach or suggest simultaneous use of the both first and second keys to properly deactivate an alarm system to permit authorized access to the content of a container. Moreover, there is no disclosure whatsoever in Kniffen et al that two users in the same location have first and second keys which each include different subsets of a complete code set. On the contrary, column 9, lines 26-37 of the Kniffen et al specification is completely silent as to this issue and merely requires the presence of two or more users in the same location within a predetermined window period

of time, without more. Therefore, the Examiner's conclusion that the two or more users provide subsets of a complete code set is not supported by the disclosure of the Kniffen et al itself.

The Official Action dated October 28, 2008 also concedes that Kniffen et al does not disclose means for destroying the contents of a container unless the container is de-activated by the correct code inputted by simultaneous co-action between a primary and secondary key for de-activating the container (page 3, lines 13-14 of the Official Action dated October 28, 2008). As noted above, the purpose of Kniffen et al is to protect the contents within a container (as, for example, a delivery truck) from unauthorized access, and not to destroy the contents of the container in response to detection of an unauthorized attempt to gain access to the container.

Kniffen et al has been combined with Mellen et al as disclosing a primary key carried by a person transporting a container, and with the Levy patent as disclosing means for destroying valuable objects or documents contained in a container when the container is manipulated unlawfully. Assuming arguendo that the Examiner's interpretation of the disclosures of the Mellen et al and Levy patents are correct, a combination of these two additional references with Kniffen et al will not teach or suggest the method defined by Independent claim 1 since none of the three combined references teach or suggest a method in which simultaneous co-action between first and second keys, each of which includes a subset of an overall code set, is required for authorized access to a container, as disclosed by Applicant and as expressly recited in appealed independent claim 1.

Neither the Kniffen et al or Mellen et al patents disclose means for protecting the contents within a container by preventing unauthorized access to the container. On the contrary, the Levy patent discloses actuating an explosive device to destroy contents within a container in the event that the

container is stolen. Therefore, the teachings of Kniffen et al and Mellen et al are diverse from express teachings of the Levy patent. As a result of the diverse nature of the respective teachings of the three combined prior art patents, there is clearly no suggestion or motivation in the prior art itself, or within the common knowledge of a person skilled in the relevant art, to combine the three applied references in any manner rendering the method defined by independent claim 1 obvious, when all positively recited features of independent claim 1 are considered in the patentability determination. Therefore, the only basis for combining the three references as proposed in the Official Action must be based upon an improper hindsight reconstruction of independent claim 1, using Applicant's own disclosure as a guide for selectively combining different features of different prior art references.

It is well established that references cannot be combined to reject a claim in the absence of a suggestion or motivation in the prior art itself to combine the references. See, for example, Micro Chemical, Inc. v. Great Plains Chemical Co., Inc., 41 USPQ 2d 1238 (Fed. Cir. 1997); In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992). Moreover, it is improper to selectively combine different features of different references to reconstruct a claim, using an Applicant's own disclosure as a guide for the selective combination. See, for example, Orthopedic Equipment & Co. v. United States, 217 USPQ 193 (Fed. Cir. 1983).

In the instant case, there is clearly no suggestion or motivation in the prior art itself, or within the common knowledge of a person skilled in the relevant art, to combine the Kniffen et al, Mellen et al, and Levy patents in any manner rendering appealed independent claim 1 obvious as a result of the diverse teachings of the individual combined references. Moreover, even if the references could be combined, this combination would nonetheless not teach or suggest the method defined by independent claim 1 since none of the three applied references teaches or suggests simultaneous co-action of first and

second keys, each of which include a subset of an overall code set for authorized access to a container, as positively recited in the method defined by appealed independent claim 1.


IX. CONCLUSION

For the reasons discussed herein, Applicant submits that independent appealed method claim 1 is allowable over the prior art applied to reject it in the Official Action dated October 28, 2008.

Dependent claims 2-20 are believed to be allowable, at least for the same reasons as parent independent claim 1.

Applicant respectfully requests that the rejection of the claims 1-20 made in the Official Action dated October 28, 2008 be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark P. Stone', is written above the printed name and address.

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APPENDIX OF APPEALED CLAIMS

Claim 1. A method pertaining to the transportation of an alarmed container, particularly with respect to the transportation of valuable objects or valuable documents, wherein the container (1) includes a first electronic unit (2) which can function to accept and permit deactivation and/or opening of the container, and wherein a primary key (10) by means of which the container can be opened includes a second electronic unit (12) for communication with the first electronic unit (2) so as to initiate opening of the container, said container including means for destroying the valuable objects or documents contained therein unless said container is deactivated by a complete code-set (ABCD) when opening the container, characterised in that a person transporting the container (1) carries the primary key (10), the steps of said method comprising opening and/or deactivation of the container (1) at an intended destination with the aid of a code subset (AB) from said person-carried primary key (10) in simultaneous co-action with a code subset (CD) from a secondary key (20) located at said intended destination, and providing said complete code-set (ABCD) from said simultaneous co-action between said primary and secondary keys for initialising opening/deactivation of said container without destroying the valuable objects or documents within said container.

Claim 2. A method according to Claim 1, characterised in that the secondary key (20) includes a third electronic unit (22) that contains a subset (CD) of the complete code-set (ABCD) required to initiate deactivation and/or opening of the container (1).

Claim 3. A method according to Claim 1, characterised by the step of, in the case of a transportation route (100) that includes a number of delivery destinations/collecting destinations (110, 120, 130), placing at said delivery/collecting destinations secondary keys (20) that have mutually varying code subsets; and opening or deactivating the container by said person-carried primary key (10) in co-action with code subsets (CE, EF, GH) from said respective secondary keys (20) at said respective delivery/collecting destinations (110, 120, 130) along said transportation route (100).

Claim 4. A method according to Claim 1, characterised by the step of opening/deactivating the container within a predetermined time interval at a predetermined destination (110, 120, 130).

Claim 5. A method according to Claim 1, characterised by the step of opening/deactivating the container at a predetermined destination (110, 120, 130) only within a predetermined geographical area.

Claim 6. A method according to Claim 1, characterised by the step of blocking a lost said primary key (10) and replacing the lost primary key with a new said primary key (10) containing a new said code subset, and simultaneously modifying said complete code set for opening/deactivation of the container (1).

Claim 7. A method according to Claim 1, characterised by the step of blocking a lost said secondary key (20) and replacing said lost secondary key with a new said secondary key (20) that contains a new said code subset, and simultaneously modifying said complete code set for opening/deactivation of the container (1).

Claim 8. An arrangement for carrying out the method according to Claim 1, characterised in that said primary key (10) includes said second electronic unit (12) in which said code-subset is stored; and in that said second electronic unit (12) is encapsulated in a first casing (11).

Claim 9. An arrangement according to Claim 8, characterised in that said secondary key (20) which includes a third electronic unit (22) or a memory unit for storing a code subset; and in that said third electronic unit (22) or memory unit is encapsulated in a second casing (21).

Claim 10. An arrangement according to Claim 8, characterised in that the arrangement comprises said secondary

key (20) that includes a memory unit in the form of a memory card or a wire memory for storage of relevant code subsets, wherein a serial number of said memory unit constitutes a relevant code subset (CD, EF, GH).

Claim 11. A method of using said primary key (10) and a number of said secondary keys (20) in accordance with Claim 1, characterised in that the primary key (10) and the secondary keys (20) are used in conjunction with security transport to different geographical destinations.

Claim 12. A method according to Claim 2, characterised by the step of in the case of a transportation route (100) that includes a number of delivery destinations/collecting destinations (110, 120, 130), placing at said delivery/collecting destinations secondary keys (20) that have mutually varying code subsets; and opening or deactivating the container by said person-carried primary key (10) in co-action with code subsets (CE, EF, GH) from said respective secondary keys (20) at said respective delivery/collecting destinations (110, 120, 130) along said transportation route (100).

Claim 13. An arrangement according to Claim 9, characterised in that the arrangement comprises a said secondary key (20) that includes a memory unit in the form of a memory card or a wire memory for storage of relevant code subsets, wherein a

serial number of said memory unit constitutes a relevant code subset (CD, EF, GH).

Claim 14. An arrangement for carrying out the method according to Claim 2, characterised in that the arrangement comprises said primary key (10) that includes said second electronic unit (12) in which said code-subset is stored; and in that said second electronic unit (12) is encapsulated in a first casing (11).

Claim 15. An arrangement for carrying out the method according to Claim 3, characterised in that the arrangement comprises said primary key (10) that includes said second electronic unit (12) in which said code-subset is stored; and in that said second electronic unit (12) is encapsulated in a first casing (11).

Claim 16. An arrangement for carrying out the method according to Claim 4, characterised in that the arrangement comprises said primary key (10) that includes said second electronic unit (12) in which said code-subset is stored; and in that said second electronic unit (12) is encapsulated in a first casing (11).

Claim 17. An arrangement for carrying out the method according to Claim 5, characterised in that the arrangement comprises said primary key (10) that includes said second

electronic unit (12) in which said code-subset is stored; and in that said second electronic unit (12) is encapsulated in a first casing (11).

Claim 18. A method of using said primary key (10) and a number of said secondary keys (20) in accordance with Claim 2, characterised in that the primary key (10) and the secondary keys (20) are used in conjunction with security transport to different geographical destinations.

Claim 19. A method of using said primary key (10) and a number of said secondary keys (20) in accordance with Claim 3, characterised in that the primary key (10) and the secondary keys (20) are used in conjunction with security transport to different geographical destinations.

Claim 20. A method of using said primary key (10) and a number of said secondary keys (20) in accordance with Claim 4, characterised in that the primary key (10) and the secondary keys (20) are used in conjunction with security transport to different geographical destinations.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE